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THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

RATHER & PRESTIA

~~The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.~~

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Paper No. 33

UNITED STATES PATENT AND TRADEMARK OFFICE

MAILED

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

MAR 10 1999

ERIC C. MARTIN,
Junior Party
(Patent No. 5,575,817)¹,

PAT. & T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

v.

ANDREW H. CRAGG, and MICHAEL D. DAKE

Senior Party
(Application 08/461,402)²

Patent Interference No. 104,083

Before McKelvey, Senior Administrative Patent Judge, Schafer, Lee and Torczon, Administrative patent Judges.

PER CURIAM

JUDGMENT

Junior party Martin has failed to serve its case-in-chief testimony on priority by the time such service was due, i.e.,

¹ Filed August 19, 1994.

² Assigned to Boston Scientific Technology, Inc. Accorded the benefit of European applications EP9440284.9, filed February 9, 1994, and EP94401306.9, filed June 10, 1994. Also accorded the benefit of U.S. applications 08/317,763, filed October 4, 1994, and 08/312,881, filed September 27, 1994.

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March 1, 1999. Based on party Martin's failure to take testimony, party Cragg has filed a miscellaneous motion for judgment or a show cause order under 37 CFR § 1.652.

In a telephone conference conducted at 2:45 PM, March 8, 1999, between administrative patent judge Jameson Lee and counsel to the respective parties, Mr. Peter Davis, counsel to party Martin, indicated that the failure to serve its case-in-chief evidence was not inadvertent and that the junior party would have no objection to the Board's entering adverse judgment against party Martin on the basis that its case-in-chief evidence was not served. Accordingly, entry of judgment against party Martin is now appropriate.

It is **ORDERED** that judgment as to the subject matter of count 1 is entered against junior party Martin and awarded in favor of senior party Cragg.

It is **ORDERED** that Eric C. Martin is not entitled to a patent containing claim 1 of his involved patent, which corresponds to count 1.

It is **ORDERED** that on this record, Andrew H. Cragg and Michael D. Dake are entitled to a patent containing their application claim 89 which corresponds to the count.

It is **ORDERED** that upon return of party Cragg's involved application to the primary examiner, party Cragg shall inform the

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examiner of the administrative patent judge's decision (Paper No. 20) granting party Cragg's motion to correct inventorship (Paper No. 16), and request that the correction, inclusive of the accompanying petition and amendment, be processed and entered in the official file of party Cragg's involved application.

It is **FURTHER ORDERED** that in light of this entry of judgment, party Cragg's motion for judgment or an order to show cause why judgment should not be entered against party Martin is dismissed as moot.

Fred Mckelvey
Fred E. Mckelvey, Senior)
Administrative Patent Judge)
)
Richard E. Schafer
Richard E. Schafer)
Administrative Patent Judge)
)
Jameson Lee
Jameson Lee)
Administrative Patent Judge)
)
Richard Torczon
Richard Torczon)
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BOARD OF PATENT
APPEALS
AND
INTERFERENCES

Interference No. 104,083
Martin v. Cragg

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